

## **CHAPTER 9: UNAUTHORIZED ASSISTANCE**

### **9.1 INTRODUCTION**

During the term of an Agency loan, there may be cases when the borrower or tenants receive assistance to which they are not entitled. Such unauthorized assistance may be due to intentional fraud, inadvertent submittal of inaccurate information by borrowers or tenants, Agency error in calculation or assignment of benefits, or other causes. In cases where unauthorized assistance is identified, the Agency seeks to collect the entire amount of assistance determined to be unauthorized.

This chapter covers Agency procedures for identifying and collecting unauthorized assistance received by tenants, members, or borrowers.

## **SECTION 1: TYPES OF UNAUTHORIZED ASSISTANCE**

### **9.2 OVERVIEW**

The Agency has established procedures for servicing its multifamily housing loans and grants when it determines that the borrower, grantee, or tenants were not eligible for all or part of the financial assistance received, or the project was not made subject to restrictive-use provisions required by law and/or regulation. Unauthorized assistance includes the following categories:

- The recipient was not eligible for the assistance.
- The property, as approved, does not qualify for the program (e.g., a property clearly above modest in size, design, or cost, or that was not located in an area designated as rural when the initial loan was made).
- The loan or grant was made for unauthorized purposes (e.g., purchase of an excessive amount of land).
- The recipient was granted unauthorized subsidy in the form of interest credits, rental assistance, or a subsidy benefit received through use of an incorrect interest rate.
- The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided.

### **9.3 ADDRESSING UNAUTHORIZED ASSISTANCE**

Subpart O of 7 CFR Part 3560 establishes the Agency's authority to seek recapture of the full amount of unauthorized assistance regardless of whether receipt of the assistance is due to errors by the Agency, the borrower, or the tenant. In determining whether to recapture unauthorized assistance, the Agency will consider the cost-effectiveness of such action given the

amount of unauthorized assistance, the availability of records to support the Agency's determination, and any applicable statute of limitations.

However, there are certain circumstances where repayment of the unauthorized assistance will not be the agreed-to corrective action. The Agency may forgo collection of unauthorized assistance if the following conditions are met:

- A demand for recovery of the unauthorized assistance was made;
- The unauthorized assistance did not result from inaccurate or false information knowingly or fraudulently provided by a borrower or tenant;
- The Agency determines that the borrower or tenant is unable to comply with the unauthorized assistance repayment demand, but is otherwise willing and able to meet Agency requirements; and
- The Agency determines that it is in the best interest of the Federal Government to forgo collection of the unauthorized assistance.

At the other extreme, the Agency can also choose to initiate liquidation or enforcement proceedings against a recipient of unauthorized assistance on a case-by-case basis.

## **SECTION 2: IDENTIFYING UNAUTHORIZED ASSISTANCE**

### ***[7 CFR 3560.703]***

#### **9.4 OVERVIEW**

Unauthorized assistance may be identified through audits conducted by the Office of Inspector General (OIG), through reviews conducted by Loan Servicers, or through other means such as information provided by a private citizen that documents the receipt of unauthorized assistance by a recipient of Agency assistance. In addition, a borrower or management agent also may identify unauthorized assistance resulting from tenant error or fraud.

If the Agency has reason to believe that unauthorized assistance was received but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to OGC or the National Office, as appropriate, for review and advice. OIG investigation should be requested in every case where the Agency knows or believes that the assistance was based on false information. If OIG conducts an investigation, the Agency's notification and collection procedures will be deferred until the investigation is completed.

#### **9.5 REQUIREMENTS FOR IDENTIFYING UNAUTHORIZED ASSISTANCE**

Identification of unauthorized assistance may be accomplished by the Agency, or by borrowers in cases involving tenant fraud. The Agency may use all available means to identify unauthorized assistance, including audit reports, monitoring activities, and information provided by reliable sources. Borrowers have the primary responsibility for identifying and pursuing cases of unauthorized assistance received by tenants.

The Agency will take necessary actions to identify unauthorized assistance, provide notice of the unauthorized assistance to the borrower, and recapture that assistance. At its discretion, the Agency may choose to continue with the borrower following the receipt of unauthorized assistance if certain criteria are met. Section 7 of this chapter presents the requirements and procedures for continuation of accounts following the receipt of unauthorized assistance.

#### **9.6 METHODS OF IDENTIFYING UNAUTHORIZED ASSISTANCE**

The Agency uses a number of methods to identify unauthorized assistance, including:

- Audits conducted by OIG;
- Reviews by Agency personnel; or
- Other means (e.g., information provided by a private citizen that documents the unauthorized assistance).

In addition, the Agency has the authority to pay a contractor (from authorized contracting funds) to conduct an audit to identify unauthorized assistance. In such cases, the State Office and Contracting Staff would work together to identify audit needs and a contractor to perform the audit.

OIG audits can be either random, or targeted at projects or borrowers suspected of receiving unauthorized assistance. These audits may be either requested by Loan Servicers or conducted at OIG's initiative. In every case where the Agency knows or believes that the unauthorized assistance was based on false information, OIG investigation will be requested by the Servicing Office as provided for in RD Instruction 2012-B, Investigation and Whistleblower (Hotline) Complaints.

## **9.7 DOCUMENTATION OF UNAUTHORIZED ASSISTANCE**

Loan Servicers must document the reasons for unauthorized assistance in the case file, specifically stating whether the cause was error or submission of false or inaccurate information. The case file will specifically state whether the unauthorized assistance was a result of:

- Submission of inaccurate information by the recipient;
- Submission of false information by the recipient;
- Submission of inaccurate or false information by another party on the recipient's behalf, such as a loan packager, developer, or real estate broker, or professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;
- Error by Agency personnel, either in making computations or failure to follow published regulations or guidance; or
- Error in preparation of a debt instrument that caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved or which was caused by omission from the instrument of language required by applicable regulation (e.g., restrictive-use provisions).

## **9.8 NOTICE TO RECIPIENT**

### **A. Agency Notice to Borrower**

The Agency will provide notice to borrowers upon determination that unauthorized assistance was received. The notice will:

- Specify in detail the reason(s) that the assistance was determined to be unauthorized;
- State the amount of unauthorized assistance to be repaid; and
- Establish a meeting for the borrower to discuss the basis for the claim and give the borrower an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was unauthorized.

Upon request, the Agency may grant additional time for the borrower to assemble the necessary documentation.

Generally, the Agency will provide notice of the unauthorized assistance determination in all cases, but will not aggressively pursue collection of unauthorized assistance amounting to less than \$1,000 annually.

**B. Borrower Notice to Tenant**

The borrower will provide notice to tenants upon determination that a household received unauthorized assistance. The notice will:

- Specify in detail the reason(s) that the assistance was determined to be unauthorized;
- State the amount of unauthorized assistance to be repaid; and
- Establish a meeting for the tenant to discuss the basis for the claim and give the tenant an opportunity to provide facts, figures, written records, or other information that might alter the determination that the assistance was unauthorized.

Upon request, the borrower may grant additional time for the tenant to assemble the necessary documentation.

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## SECTION 3: CORRECTING UNAUTHORIZED ASSISTANCE

### 9.9 OVERVIEW

After confirming and documenting receipt of unauthorized assistance, the next step is to shut off the flow of unauthorized assistance to the borrower or tenant receiving it. This section outlines the procedures employed to correct unauthorized assistance, including procedures for both audit and nonaudit cases.

### 9.10 ACCOUNT ADJUSTMENTS – AUDIT CASES

When a final determination has been made through an OIG audit that unauthorized assistance has been granted, the Field Office will be notified of necessary account adjustments by OIG and the State Office.

Only cases of unauthorized assistance identified by OIG audits are reported to the Field Office. In such cases, *Form RD 1951-12, Correction of Loan Account* will be completed by the Loan Servicer and submitted to the Finance Office. The Finance Office will flag the account for monitoring and reporting.

#### Types of Unauthorized Assistance

- Unauthorized loan
- Unauthorized subsidy benefits received through use of incorrect interest rate
- Unauthorized interest credit or rental assistance
- Unauthorized grant assistance

The chosen method of corrective action depends on the type of unauthorized assistance. The following text describes the actions that Loan Servicers must take to correct each type of unauthorized assistance.

#### A. Unauthorized Loan

For an active borrower with an unauthorized loan, if the problem causing the assistance to be unauthorized can be corrected, appropriate corrective action will be required. For example:

- Where a loan was in excess of the authorized amount, the Agency will require the recipient to refund the difference.
- Where the loan included funds for purchase of excess land, the Agency will require the recipient to sell the excess land and apply the proceeds to the account as an extra payment.
- Where a restrictive-use provision was omitted from a loan document, the Agency will insert the provision.

#### B. Unauthorized Subsidy Benefits Received Through Use of Incorrect Interest Rate

When the recipient was eligible for the loan but should have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of

unauthorized subsidy benefits, the Agency must correct the interest rate to that which was in effect when the loan was approved.

- Loan Servicers must ensure that all payments made are reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate.
- The Agency will service any delinquency thus created in accordance with applicable Agency procedures.
- After reapplication of payments, the Agency will service the loan as an authorized loan.
- Continuation of existing terms is authorized when the recipient is a public body with loans secured by bonds on which the interest rate cannot legally be changed or payments reversed or reapplied.

### **C. Unauthorized Interest Credit or Rental Assistance**

In cases involving rental assistance or interest credit, the subsidy benefits should be terminated as provided in *Form RD 1944, Interest Credit and Rental Assistance Agreement*. The Agency will service unauthorized rental assistance as a delinquent account (see Chapter 10).

When rental assistance is advanced in excess of the rental assistance contract limit, the Loan Servicer will send a report of the facts and a recommendation of proposed action through the State Director to the National Office. The National Office will determine the disposition of the case and notify the State Director, who will instruct the Loan Servicer of the required action.

### **D. Unauthorized Grant Assistance**

When the recipient will repay unauthorized grant assistance over a period of time, the Agency will charge interest at the rate specified in the grant agreement for default from the date received until paid.

- The Agency will schedule repayment over a period consistent with the recipient's repayment ability but not to exceed 10 years.
- The Loan Servicer must maintain collection records, as the Finance Office cannot set up an account for repayment of a grant. The Loan Servicer will attempt to collect the monies due, and all collections will be remitted with *Form RD 451-2, Schedule of Remittances* as a "Miscellaneous Collection for Application to the General Fund."
- The Loan Servicer will report quarterly to the State Office on cases identified in OIG audits.



- If the Agency determines that the recipient cannot repay unauthorized grant assistance, the Agency may leave the assistance outstanding under the terms of the grant agreement.
- In the case of committed funds not yet disbursed, the Agency will make no further disbursements without prior consent of the Administrator.

#### **E. Cases Where Recipient Has Both Authorized and Unauthorized Loans Outstanding**

When a recipient has both authorized and unauthorized loans outstanding, the Agency will schedule installments to be paid concurrently on all loans. The Agency will service each loan according to the loan servicing regulations in effect for an authorized loan of its type.

#### **F. Liquidation Pending**

When the Agency initiates liquidation, Loan Servicers submit *Form RD 1951-52, MFH Record Administrative Adjustment – Audit Claim*, to advise the Finance Office of the unauthorized assistance account to be established. The Finance Office establishes this account in AMAS, and the account will be flagged accordingly. The account is overseen by the Servicing Official.

#### **G. Liquidation Not Initiated**

Cases in which liquidation have not been initiated because the outstanding amount is less than \$1,000 or it would not be in the Agency's best interest to do so will be adjusted, and the adjustments will be reflected on *Form RD 1951-52, MFH Record Administrative Adjustment – Audit Claim*. In this instance only, State Office staff may make adjustments without the recipient's signature.

As requested, the State Office will report to OIG on the status of cases of unauthorized assistance identified in OIG audit reports and tracked by Loan Servicers. The amounts to be reported will be determined by the Field Office after servicing actions have been completed.

### **9.11 ACCOUNT ADJUSTMENTS – NONAUDIT CASES**

Servicing procedures are essentially the same for audit and nonaudit cases. However, when the Agency identifies receipt of unauthorized assistance by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are needed or grant funds are repaid.

Once the appropriate adjustments are made, the Agency will treat the loan(s) as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the Loan Servicer will receive *Form RD 451-26, Transaction Record* from the Finance Office reflecting the account status.

The Agency will handle nonaudit account adjustments as follows:

- When a change in interest rate retroactive to the date of loan closing is necessary, the borrower will complete and execute *Form RD 1951-13, Change in Interest Rate*; Loan Servicers will submit *Form RD 1951-52, MFH Record Administrative Adjustment – Audit Claim*, to the Finance Office; and Finance Office staff will reverse and reapply payments accordingly.
- When an inactive borrower agrees to repay unauthorized assistance, the Loan Servicer will notify the Finance Office by memo, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.
- If a loan is paid in full, the Agency will handle the remittance like any other final payment.

## **SECTION 4: RECAPTURE OF UNAUTHORIZED ASSISTANCE TO BORROWERS**

### **9.12 OVERVIEW**

To ensure that borrowers do not benefit from unauthorized assistance at the expense of others who truly need and qualify for such assistance, the Agency seeks to recover all unauthorized assistance from borrowers. The Agency has established a set of detailed procedures that Loan Servicers must follow in each case of unauthorized assistance.

### **9.13 REQUIREMENTS FOR COLLECTING UNAUTHORIZED ASSISTANCE** **[7 CFR 3560.705]**

The Agency has the authority to recapture unauthorized assistance from recipients, subject to the following terms and conditions.

- The amount due will be the amount stated in the notice letter.
- If a recipient agrees to repay the money in a lump sum, the Loan Servicer may allow a reasonable period for the recipient to arrange for repayment.
- When the recipient cannot repay the unauthorized assistance in a lump sum but will repay over a period of time, the Loan Servicer may charge interest at a reasonable rate established by the Agency.

In determining whether to recapture unauthorized assistance, the Agency will consider:

- The cost effectiveness of recapture efforts relative to the amount of unauthorized assistance to be repaid;
- The availability of records to support the Agency's unauthorized assistance determination;
- Any applicable Federal, state, or local statute of limitations;
- Whether the unauthorized assistance resulted from the provision of inaccurate or false information knowingly or fraudulently provided by the borrower or tenant; and
- The ability of the borrower or tenant to repay.

### **9.14 AGENCY RECAPTURE OF UNAUTHORIZED ASSISTANCE**

#### **A. Overview**

To collect unauthorized assistance, Loan Servicers must follow the following steps described below.

### ***1. Coordination With OGC***

In each case of unauthorized assistance, Loan Servicers need to work with OGC to determine the appropriate statute of limitations before making a decision to collect.

### ***2. Notification to Recipient***

The Agency will seek to collect unauthorized assistance from borrowers, up to the applicable statute of limitations for any particular amount of unauthorized acceptance. Normally, however, the Agency will not go back more than one year in the pursuit of unauthorized assistance unless the amount is sufficiently large to justify such action. The Loan

#### **Steps for Recapturing Unauthorized Assistance from Borrowers**

- Coordination with OGC
- Notification to recipient
- Recipient response and Agency follow-up
- Collection
- Restriction on Loan Servicer's actions

Servicer will initiate collection efforts in the notice described in the previous section. The servicing official mails the notice to the recipient by certified mail, with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office that conducted the audit and the Planning and Analysis staff of the National Office. The Loan Servicer will send the notice to all recipients who received unauthorized assistance, regardless of the amount. Generally, unauthorized assistance is not aggressively pursued beyond this notice if the amount is less than \$1,000.

### ***3. Recipient Response and Agency Follow-Up***

When the recipient does not agree with the Agency's determination, or if the recipient fails to respond to the initial letter within 30 days, the Loan Servicer will notify the recipient of the following in a second certified letter:

- The amount of assistance finally determined by the Agency to be unauthorized;
- A statement of further actions to be taken by the Agency; and
- The recipient's appeal rights.

As with the first notice, the Loan Servicer sends copies of the letter to the State Director and, for a case identified in an OIG audit report, the OIG office that conducted the audit and the Planning and Analysis staff of the National Office.

### ***4. Collection***

If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the Loan Servicer will proceed with either liquidation or legal action to enforce collection. If during the course of the appeal the appellant decides to agree with the Agency's findings or is willing to repay the unauthorized assistance, the Loan

Servicer will either continue to service the account or accept full payment, subject to all applicable prepayment requirements, as appropriate.

The Agency will allow a “reasonable period” for repayment of unauthorized assistance in a lump sum, although this will usually not exceed 90 days. If lump sum payment is not feasible, the Loan Servicer may propose a repayment schedule on an exception basis. The repayment period normally should not exceed three months.

### ***5. Restriction on Loan Servicer’s Actions***

When the Loan Servicer is the same person who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the Loan Servicer.

## **B. Procedures for Collection of Unauthorized Assistance**

Following the final Agency determination of unauthorized assistance, Loan Servicers must take the following steps:

- Notify the Finance Office of necessary account adjustments; and
- Restructure accounts so that all money owed is collected and no borrower is receiving assistance to which it is not entitled. This is normally accomplished on a case-by-case basis, with appropriate involvement of the management agent and tenant in cases where the tenant receives unauthorized assistance. Otherwise, it is accomplished on a case-by-case basis for repayment by the borrower in 3 months or less. Upon demand, borrowers must repay any unauthorized rental assistance and/or return on investment; sometimes this may be achieved through a workout agreement with the Agency. If three months is not a feasible timeframe for complete repayment, the State Director can make an exception where justified.

The specific procedures to be followed in each case will depend on the reason for the unauthorized assistance (i.e., borrower error or Agency error). The procedures associated with each cause of unauthorized assistance are discussed below.

### ***1. Borrower Error***

If the borrower assigned rental assistance incorrectly even though the tenant correctly reported income and household size, the borrower will first notify the Loan Servicer. If the Loan Servicer verifies that the error was made based on information that was available at the time the unit was assigned, the borrower or management agent will give the tenant 30 days written notice that the unit was assigned in error and that the rental assistance benefit will be canceled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

- The rental assistance will be assigned to the next eligible household based on *Form RD 1944-29, Worksheet for Credit and Rental Assistance* from which the original priority was established when the unit was erroneously assigned. The rental

assistance will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive rental assistance may not exceed the project's remaining rental assistance obligation balance.

- Restitution for unauthorized rental assistance that is the borrower's fault will be handled as a refund according to the FMI for *Form RD 1944-9, Multiple Family Housing Payment Transmittal*.

Exhibit 9-1 lists the specific actions that Loan Servicers must take to attempt to recapture unauthorized assistance to borrowers.

### **Exhibit 9-1**

#### **Loan Servicer Actions to Recapture Unauthorized Assistance to Borrowers**

Specific Agency actions to be taken in order to recapture unauthorized assistance in cases of borrower error include the following:

- Notify the borrower of the Agency's finding in a non-compliance letter. Include in the letter a specific dollar amount and timeframe for response (usually 15 days).
- Allow the borrower time to review the finding.
- If the borrower concurs with the finding and agrees to repay the unauthorized amount, require repayment within 60 days. Note that repayment can only come from project funds if the project benefited from the unauthorized assistance.
- If the borrower does not respond to the first letter within 15 days, send a second non-compliance letter. Schedule a meeting and state that a response is required within 15 days.
- If there is no response by five days after the deadline established in the second non-compliance letter, send a third and final letter. This letter should include a final demand and a description of the collection and enforcement action(s) the Agency plans to take if there is no response.
- After the third letter is sent, the amount due becomes an audit receivable in 15 days. Make necessary changes to AMAS, and make arrangements to collect the unauthorized amount (no "netting" is authorized on this amount).
- Borrowers have until five days before the deadline for collection to appeal the Agency's decision.
- If there is still no acceptable response from the borrower, file a problem case report with the State Director. This report will recommend specific actions that should be taken to enforce compliance (e.g., acceleration, suing for performance, replacement of management agent).

## **2. Agency Error**

There are several types of Agency error that may result in unauthorized assistance. The most common include:

- Use of incorrect interest rate;
- Assignment of unauthorized rental assistance;
- Improper issuance of interest credit;
- Non-application of recoverable cost changes;
- Approving a loan for ineligible purposes; and
- Other errors (e.g., failure to apply use restrictions).

Exhibit 9-2 describes the actions that Loan Servicers must take to attempt to recapture unauthorized assistance in the event of Agency error.

### **Exhibit 9-2**

#### **Agency Error-Actions to Recapture Unauthorized Assistance**

Specific Agency actions to be taken in order to correct cases of Agency error include the following:

- Identify the mistake and the amount of assistance involved.
- Provide notice to the borrower of the Agency's intent to correct its mistake and collect the unauthorized amount. This notice will include a description of where corrections to documents are required, if applicable.
- Contact OGC for advice if needed.
- Request repayment based on OGC advice regarding the feasibility of collection and any applicable collection threshold. The State Director retains the authority to decide not to pursue any unauthorized amounts below the collection threshold. If the unauthorized amount is above the collection threshold, no OGC review is required.
- Take all appropriate actions to correct the original error that led to the unauthorized assistance, and negotiate terms of repayment (if applicable) with the borrower.
- If there is no response from the borrower, follow the procedures outlined above for sending up to three non-compliance letters before escalating to more formal enforcement.

## **9.15 REPAYMENT METHODS**

Repayment of unauthorized assistance may be accomplished by voluntary repayment from the borrower, full prepayment, or offsets. The best approach will depend largely on case-specific circumstances.

When a tenant moves out of a property, the borrower is no longer responsible for collecting the unauthorized assistance. At that point, the Agency has primary responsibility to collect at its discretion and in accordance with the Debt Collection and Improvement Act.

## **9.16 FULL PREPAYMENT**

If full prepayment is determined to be the optimal servicing solution, the Agency will accept the prepayment in accordance with applicable requirements under 7 CFR Part 3560, Subpart N. Prepayment would be the best solution if the action would not result in tenants being displaced such that they could not find comparable housing elsewhere in the community at rental rates of 30 percent of income or less, and if there would be no adverse impact to low or moderate income housing stocks for majority or minority segments of the community. Appropriate restrictive-use provisions, if applicable, must remain in the deeds of release following prepayment.



## **SECTION 5: RECAPTURE OF UNAUTHORIZED ASSISTANCE TO TENANTS**

### **9.17 OVERVIEW**

Section 4 addressed the requirements and procedures for recapturing unauthorized assistance from borrowers. The Agency also established requirements that borrowers identify and collect unauthorized assistance from tenants. This section addresses those requirements and procedures.

### **9.18 REQUIREMENTS FOR COLLECTION OF UNAUTHORIZED ASSISTANCE TO TENANTS [7 CFR 3560.708]**

Any assistance resulting from misrepresentation of tenant income or status that varies from the allowable amounts set forth under the occupancy requirements is unauthorized and must be repaid. Borrowers who discover that unauthorized assistance has been granted to a tenant have primary responsibility for attempting to recapture it, although the Agency may provide assistance, when needed, at its discretion.

### **9.19 PROCEDURES FOR COLLECTION OF UNAUTHORIZED ASSISTANCE TO TENANTS**

If it appears that the tenant has knowingly misrepresented household status to the borrower, the Loan Servicer will look into the case to determine the facts. If the Loan Servicer determines that income or number of occupants was misrepresented, he/she will direct the borrower to demand and to attempt to recoup improperly received rental assistance from the tenant.

The borrower will provide the tenant with a notice of intent to recapture unauthorized assistance. The notice informs the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recapture the unauthorized rental subsidy. The borrower will inform the Agency of the unauthorized benefits and of the agreement made by the tenant to repay.

Money collected will be remitted to the Finance Office according to the FMI for *Form RD 1944-9, Multiple Family Housing Payment Transmittal*. The rental assistance will be credited to the rental assistance account. If the tenant fails to make restitution, the Loan Servicer will refer the case to the State Director, who will request the advice of OGC on further action.

Tenants whose rental assistance benefit will be canceled due to mistaken assignment of the benefit by the borrower/management agent must receive 30 days written notice. In such cases, Loan Servicers must insure that borrowers grant tenants the chance to cancel their lease or appeal the decision.

Exhibit 9-3 outlines the steps that must be taken by Loan Servicers and borrowers to recapture unauthorized assistance from tenants.

**Exhibit 9-3****Actions to Recapture Unauthorized Assistance from Tenants**

The following steps should be taken by the parties involved to correct cases of unauthorized assistance due to tenant error:

- The Agency provides notice of its findings to the borrower.
- If the borrower does not respond to the first letter, the Agency will send a second letter. Loan Servicers will notify OGC if they suspect the borrower and/or management agent are intentionally attempting to defraud the Government.
- If there is no response following the second letter, the Agency will follow its procedures for sending additional letters as outlined above, or obtain OGC advice, as dictated by the facts of each case.
- The Agency allows the borrower time to review the finding. The borrower may either confirm that the Agency's finding is correct, provide evidence that the problem has been corrected, or note that the tenant disputes the finding.
- If the borrower agrees with the Agency's finding and discovers the source of the unauthorized assistance, the borrower will provide a notice of lease violation to the tenant and provide an opportunity for repayment.
- The borrower and tenant will negotiate the repayment terms. If the tenant refuses or is unable to repay, the borrower will initiate eviction proceedings. The Agency will provide support as needed through this process.
- The borrower will notify the Agency of the actions taken in response to the problems cited (e.g., repayment, agreed-upon date for repayment, eviction) as well as a plan for additional actions (with time frame). These should be added to the case file.
- If either the borrower or the tenant dispute the Agency's finding, they may provide evidence for consideration by the Agency. OGC assistance may be required to review and interpret these submissions.
- If tenant has moved out of the unit, the borrower must turn over relevant tenant records upon request (e.g., tenant move-out form).
- The Agency determines what action(s) it will take, with advice and recommendations from OGC. If OGC recommends offsets, those procedures will be initiated.

## **SECTION 6: OFFSETS**

### **9.20 GENERAL OFFSET REQUIREMENTS**

Offsets are a process by which delinquent debts are collected from borrowers, grantees, or tenants through means other than a direct payment. Offsets are normally implemented only when the Agency considers the delinquent debts to be otherwise uncollectable. Loan Servicers rarely make the “uncollectable” determination; this task normally falls to regional attorneys or investigators.

Offsets must not interfere with or defeat the purpose of Agency programs, and will be used only where feasible and in the best interest of the government. Exhibit 9-4 lists the general procedures that Loan Servicers must follow when implementing offsets.

### **9.21 ADMINISTRATIVE OFFSETS**

Administrative offset is a process whereby other federal agencies owing money to a borrower, grantee, or tenant pay the Agency rather than the party to which the money is owed. The following steps must be taken by Loan Servicers when implementing administrative offsets.

- Consider hardship and unfairness to the borrower to justify not pursuing administrative offset. In making this determination, Loan Servicers should document whether or not the borrower knowingly did wrong, consider the health of the owner and/or those with controlling interests in the borrower entity, and evaluate the financial impacts of pursuing offsets.
- Give the borrower notice through a formal letter, afford the borrower all applicable rights, and accelerate the account before asking another agency to offset any amount of debt.
- Cancel promptly (i.e., within 30 to 90 days) administrative offset requests to other agencies if for any reason the Agency is no longer entitled to such offset.

**Exhibit 9-4**  
**General Procedures for Implementing Offsets**

- **Only pursue offset when appropriate.** Avoid using offset to collect a debt more than 6 years after the right to collect the debt first accrued, unless the delay resulted from facts that were not known and could not reasonably have been known. Do not pursue offset against a claim that has been accrued for more than 10 years under any circumstances.
- **Notify borrowers of intent to use offsets.** Notify borrowers of the Agency's intent to use offset procedures. If the borrower requests a meeting to discuss the matter, schedule the meeting and advise the borrower of the date, time, and place.
- **Inform borrowers of their rights.** Inform borrowers that they have 15 days after receipt of notification to inspect/copy records, and 30 days to either make a written submission, request a meeting, or appeal. Inform borrowers of when and where records may be inspected and/or copied within 10 days of the request to do so.
- **Respect borrowers' rights.** Ensure that borrowers' rights are respected (e.g., the right to inspect and copy records, the right to avoid offset by paying debts in full within 30 days, the right to present reasons why offset should not be used, the right to request meetings with the decision-making official, and the right to appeal the decision).
- **Communicate effectively with borrowers.** Make decisions promptly, within 15 days, after a meeting with a borrower and communicate them in writing to the borrower. If a request from a borrower not to use offset is denied, the letter communicating that decision should advise the borrower of his/her rights to appeal to the National Appeals Division.
- **Follow appropriate hearing procedures.** Inform borrowers that they may request a hearing if they dispute any Agency finding. Hearings can include consideration of any issues concerning the debt that the borrower wishes to raise. Respond promptly to all written or oral requests or presentations made by borrowers.
- **Make appropriate refunds.** Make refunds within 45 days if it is determined that an amount should not have been offset or if the borrower wins an appeal.
- **Credit collections to borrower's account.** Process amounts collected through offset as regular payments that are credited to the borrower's account.
- **Report to State Administrative Officer.** Consolidate and forward all information on borrowers referred for and/or collected through offsets to the State Administrative Officer within five days after the end of each quarter. The State Administrative Officer then consolidates the local reports and forwards that information to the Finance Office within 10 days after the end of the quarter.

## 9.22 SALARY OFFSETS

When the Agency uses salary offsets, payment for the debt is deducted from the employee's pay and sent directly to the creditor agency. Exhibit 9-5 presents the procedures that Loan Servicers must follow when implementing salary offsets.

### Exhibit 9-5

#### Procedures for Implementing Administrative Offsets

- **Determine feasibility of salary offset.** Decide on a case-by-case basis whether salary offset is feasible.
- **Develop a payment schedule.** Schedule installment payments to liquidate the debt in approximately three years, if possible. Certifying Officials are responsible for determining the size and frequency of the deductions, which must be reasonable given the size of debt and ability to pay. Installment deductions will generally be made over a period no longer than the anticipated period of employment.
- **Set offsets at a reasonable amount.** Ensure that no more than 15 percent of an employee's disposable pay will be offset per pay period unless such an arrangement is agreed to by the employee.
- **Provide key information to borrower's employer.** Certify the following to the borrower's employing agency when requesting initiation of salary offset: that debt in a certain amount exists, that proper offset procedures have been followed, and that actions required by the Debt Collection Act have been taken.
- **Notify borrower of planned offsets.** Make notification of salary offset to the borrower at least 30 days before it is to begin. Ensure that the evidence used to make the decision to notify the borrower is sufficient for the Agency to proceed at a hearing.
- **Follow appropriate hearing procedures.** Arrange for a hearing officer and notify the employee of the time and place of the hearing whenever accepting a petition for a hearing regarding salary offset. The hearing officer will issue a written decision no later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the Certifying Official grants a delay in the proceedings. Both the employee and the Agency will receive a copy of the hearing officer's decision.
- **Report to Field Offices.** Notify Field Offices of payments received from salary offset by providing a transaction record from the Finance Office.
- **Initiate cancellation procedures at the appropriate time.** Complete Form AD-343 and send it to the National Office if a borrower's name has been submitted to another agency for offset and the borrower's account is brought current or otherwise satisfied. The National Office will notify the paying agency that the borrower is no longer delinquent or indebted, and advise them to cancel the offset.

## **9.23 IRS OFFSETS**

IRS offsets are a process by which the IRS can reduce a taxpayer's refund by the amount of any legally enforceable debt owed to a federal agency. The following procedures should be followed by Loan Servicers when considering implementing IRS offsets:

- Screen the accounts of all borrowers potentially eligible for IRS offset. The Finance Office should take the lead, but Field Offices will further screen the accounts based on ineligibility criteria.
- Credit the borrower's account for the amount required after IRS effects an offset and notify the appropriate Field Office. The Finance Office will take the lead; it may deduct an amount equal to the IRS' processing costs from the amount offset.

## **SECTION 7: CONTINUATION OF LOAN ACCOUNTS**

### **9.24 OVERVIEW**

The Agency realizes that it would be counter-productive to liquidate the account of each borrower that receives unauthorized assistance. Thus, a much more common scenario is to continue the loan account with a stipulation that some or all of the unauthorized assistance will be collected, either immediately or over time. This way, the Agency can continue to meet the needs of low-income tenants while still responsibly protecting the taxpayers' interest in the RHS portfolio.

### **9.25 REQUIREMENTS FOR CONTINUATION OF LOAN ACCOUNTS** **[7 CFR 3560.707]**

If a recipient of unauthorized assistance is willing to pay the amount in question but cannot repay within a reasonable period of time, the Agency may continue to service the account if the recipient has the legal and financial capabilities to continue.

When the borrower is responsible for the circumstances causing the assistance to be unauthorized, the borrower must take appropriate action to correct the problem. When unauthorized assistance is due to Agency actions, the Agency will take appropriate action to correct the problem. When circumstances resulting in a determination of unauthorized assistance cannot be corrected, the Agency may, at its discretion, decide that continuation on existing terms is appropriate.

### **9.26 AGENCY DECISION TO CONTINUE ACCOUNT**

If a recipient is willing to pay the amount in question but cannot repay within a reasonable period of time, the Agency has the option of continuing to service the account. The Agency will take appropriate servicing actions to continue the account if all of the following conditions are met:

- The recipient did not provide false information;
- Requiring prompt repayment of the unauthorized assistance would be highly inequitable; and
- Failure to collect the unauthorized assistance in full will not adversely affect the Agency's financial interest.

### **9.27 SERVICING OPTIONS IN LIEU OF LIQUIDATION OR LEGAL ACTION TO COLLECT**

When the conditions for continuation of the account are met, the Loan Servicer will service an unauthorized loan or grant, provided the recipient has the legal and financial capabilities to continue. Agency actions will depend on whether the case involves an active or inactive borrower or grantee and the type of unauthorized assistance received.

**A. Agency Actions**

Generally, borrowers' accounts need to be restructured so that the Agency collects all money due it and so that no borrower is receiving assistance to which he/she is not entitled. The Loan Servicer accomplishes this result through the account adjustments described below. In most cases requiring such corrective actions, the Loan Servicer reports to the State Director, who often consults with OGC on further actions.

**B. Corrections Related to Interest Rate Changes**

Following the correction of an incorrect interest rate that had resulted in unauthorized assistance, the Agency will not only schedule future installments at the lower of the effective interest rate at the date of either loan approval or loan closing, but calculate and collect back interest for payments already made.

The Agency will service a delinquency created through reversal and reapplication of payments to effect corrections related to interest rate changes according to its procedures for servicing delinquent accounts (See Chapter 8).

**C. Notice of Determination When Agreement is not Reached**

If the recipient does not agree with the Agency determination of unauthorized assistance or does not respond to the initial letter within 30 days, the Loan Servicer must send a second certified letter (to the same recipients) specifying the final amount determined by the Agency to be unauthorized, further actions to be taken by the Agency and the recipient's appeal rights.

**D. Reporting to OIG**

At prescribed intervals, the Finance Office will report to OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The Finance Office will determine the amounts to be reported to OIG after account servicing actions have been completed. For reporting purposes, the procedures outlined below apply.

***1. Unauthorized Loan***

When a borrower repays an unauthorized loan account in full, Loan Servicers should include that payment in the next scheduled report only. When the Agency approves continuation with the loan on existing terms, Loan Servicers will report the case as resolved on the next scheduled report. No further reporting is required.

***2. Unauthorized Subsidy***

For unauthorized subsidy cases, after the borrower has repaid the unauthorized amount or payments have been reversed and reapplied at the correct interest rate, Loan Servicers should include the unauthorized subsidy as resolved in the next scheduled report. No further reporting is required.



### ***3. Liquidation Pending***

When the Agency establishes an account with liquidation action pending, Loan Servicers will include the status in each scheduled report until the liquidation is completed or the account is otherwise paid in full.

### ***4. Liquidation Not Initiated***

When liquidation is not initiated, Loan Servicers should report so in the next scheduled report, along with collections (if any). No further reporting is required.

### ***5. Unauthorized Grant***

When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum are included in the OIG Report until the account is paid in full.

### ***6. Inactive Borrower***

When an inactive borrower has agreed to repay unauthorized assistance, Loan Servicers will report the account initially, and include collections and status in each scheduled report until the account is paid in full.

## **E. Quarterly Reporting to the State Office**

The Loan Servicer will report to the State Office by the 1<sup>st</sup> of March, June, September, and December of each year, the repayment of unauthorized rental assistance by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at the end of the reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15<sup>th</sup> of March, June, September, and December of each year for inclusion in the OIG report.

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## **SECTION 8: ENFORCEMENT**

### **9.28 OVERVIEW**

If all of the Agency actions described in the Chapter fail to result in an acceptable resolution to the unauthorized assistance, enforcement actions may be considered. Most enforcement actions will require close coordination with OGC, which will develop the Agency's enforcement approach based on information supplied by Loan Servicers. Keep in mind, however, that it is the Agency's goal to resolve most unauthorized assistance cases before they reach this stage.

### **9.29 AGENCY ACTIONS FOR ENFORCEMENT AGAINST RECIPIENTS OF UNAUTHORIZED ASSISTANCE**

If a recipient is unwilling or unable to arrange for repayment, or continuation is not feasible, the Agency may take one of the following actions, as appropriate.

#### **A. Liquidation**

In the case of an active borrower with a secured loan, the Loan Servicer will attempt to have the recipient liquidate voluntarily. If the recipient agrees, Loan Servicers will document the agreement with an entry in the running record of the case file.

Where real property is involved, the Loan Servicer will prepare a letter to be signed by the recipient agreeing to voluntary liquidation. If the recipient does not agree to voluntary liquidation, or agrees but is unable to accomplish it within a reasonable period of time (usually not more than 90 days), the Agency will initiate forced liquidation action unless the amount of unauthorized assistance outstanding totals less than \$1,000, or it can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If a borrower meets either of the two criteria to forego forced liquidation, the Agency will make all necessary account adjustments without the recipient's signature and notify the recipient by letter and a copy of *Form RD 1951-12, Correction of Loan Account* of the actions taken.

#### **B. Legal Action to Enforce Collection**

In the case of a grantee, inactive borrower, or active borrower with an unsecured loan (e.g., collection-only, or unsatisfied balance after liquidation), the Loan Servicer will document the facts in the case file and submit it to the State Director, who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The State Director will forward the case file, recommendation of the State Director, and OGC comments to the National Office for review and authorization to implement recommended servicing actions.